suspicion of knowledge on his part. I therefore do not consider that the prosecution had at the end of their case made out a case against the appellant which, if unrebutted, would warrant a conviction. The appellant therefore should not have been called on for his defence.

For the above reasons I allow the appeal, quash the conviction and set aside the sentence.

Appeal allowed.

M. PR. KANNAPPA CHETTIAR v. L. R. M. LETCHUMANAN CHETTIAR.

[Orig. Civ. Juris. (Thomson, J.) July 29, 1952]

[Ipoh — Civil Appeal No. 7 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 11 — Appeal to High Court — Jurisdiction — Interpretation.

This was an application to the High Court by way of appeal from the decision of the Ipoh Rent Assessment Board whereby the Board refused permission to the appellant to apply to the appropriate Court for ejectment of the respondent.

Held, that (1) the High Court has no jurisdiction to entertain appeals from any statutory tribunal unless such jurisdiction is expressly given to it by Statute. Section 11 of the Ordinance as amended by section 3 of the Control of Rent Ordinance, 1952 does not expressly give such jurisdiction and the Court cannot by implication assume that it did; (2) the initiative lies upon the appellate Court to take objection on the point of want of jurisdiction even though it was not raised by either party.

Cases referred to :—

(1) *R. v. Hanson* 4 B. & Ald. 519, 521.
(2) *Benson v. N. Ireland Road Transport Board* (1924) A.C. 520, 525.
(3) *Racecourse Betting Control Board v. Secretary of State for Air* (1944) 1 All E.R. 60, 61.
(4) *Sim Hock Ann v. Goh Siew Chiang* (1949) M.L.J. 62.
(5) *Foong Kooi v. Wong Ching* (1950) M.L.J. 159.
(6) *Wagner v. Singam* (1950) M.L.J. 235.
(7) *Magor & St. Mellons Rural District Council v. Newport Corpn.* (1952) A.C. 189.
(8) *Westminster Bank Ltd. v. Edwards* (1942) A.C. 529, 533.

CIVIL APPEAL.

R. H. V. Rintoul for the appellant.

Ong Huck Lim for the respondent.

Cur. Adv. Vult.

Thomson, J. : — This proceeding purports to be an appeal from a decision of the Ipoh Rent Assessment Board under the Control of Rent Ordinance, 1948, whereby the Board refused permission to the present appellant to apply to the appropriate Court for ejectment of the present respondent from certain premises in Ipoh. In view of the conclusion to which I have been compelled, I think the grounds of appeal can be sufficiently summarised as being that the Board applied wrong principles to the evidence before it and misdirected itself in law in arriving at the decision at which it did arrive although in making that decision it was not going beyond the jurisdiction conferred upon it by the Ordinance.

In my opinion, for which I shall proceed to state my reasons, this Court has no jurisdiction to entertain any such appeal.

The Rent Assessment Board is the creature of the Control of Rent Ordinance, 1948. The principal purpose of that Ordinance is to control the rents of certain classes of property but it also contains provisions (sections 12 and 13) which restrict the rights of owners of property to obtain possession of their property by providing that (except in the case of non-payment of rent) no landlord may apply to any Court for the ejectment of a tenant from his property without the permission of the Rent Board. The Board is given power *inter alia* to fix rents and to grant permission to landlords to sue for ejectment.

By section 10 the Board may at any stage of any proceedings before it reserve for consideration of the High Court any question of law that may arise, and that section proceeds to lay down the procedure to be followed in this connection and to state that "the High Court shall hear and determine the question .... of law arising on such special case". I pause here to observe that it may be that if the Board refused to state such a special case when asked to do so by a party to a proceeding before it, it is possible that an order of *mandamus* would issue to compel it to do so. I refrain, however, from expressing any opinion on the point.

The Ordinance then contains a provision relating to appeals but before dealing with that provision it is to be observed that it is well settled law that, apart from its powers *tanta et talia* to issue orders of *certiorari* and *mandamus*, this Court has no jurisdiction to entertain appeals from any statutory tribunal unless such jurisdiction is expressly given to it by statute. "The rule of law that although a *certiorari* lies unless expressly taken away, yet an appeal does not lie unless expressly given by statute." (*R. v. Hanson*[1] — per Abbott, C.J.) or, as was said by Viscount Simon, L.C., in the case of *Benson v. N. Ireland Road Transport Board*[2], "rights to appeal exist only by statute", or again as it was put by the late Master of the Rolls in the case of *Racecourse Betting Control Board v. Secretary of State for Air*[3] :—

"In the case of new tribunals set up under statute, no appeal will lie unless the right of appeal is conferred expressly or impliedly by statute, and accordingly where, as in the present case, no right of appeal is given, their decisions are not appealable."

In the Control of Rent Ordinance the only provisions relating to appeals are to be found in section

11. That section as originally enacted read as follows :—

"11. (1) No appeal shall lie from an order of the Board except on a point of law from an order giving or refusing possession of premises.

(2) Such an appeal may be brought by any party aggrieved by the order of the Board and shall be brought before the High Court by means of a notice of appeal lodged within fourteen days after the date on which the order was made."

In the case of *Sim Hock Ann v. Goh Siew Chiang*[4] it was held by Laville, J., that section 11 as thus enacted did not give an appeal against a decision of the Rent Board giving permission to sue for ejectment, and indeed prohibited any such appeal, on the ground that such a decision was not an "Order" of the Board, and that in any event the Board had no power to make "an order giving or refusing possession of premises".

The provisions of section 11 were then altered by section 9 of the Control of Rent Ordinance, 1949, which reads as follows :—

"The following section is hereby substituted for section 11 of the principal Ordinance:

11. No appeal shall lie from an order of the Board except on a point of law."

In view of certain other provisions in the 1949 Ordinance which it is unnecessary to discuss in detail here, it is probable that the Legislature had in mind certain observations as to the powers of the Board contained in the judgment of Laville, J., to which I have just referred, but in view of the actual *ratio* of that judgment the retention of the word 'order' in the new section could be regarded as indicating it to be the intention of the Legislature that there should still be no appeal from decision of the Board giving or refusing permission to sue for ejectment. This view was taken by Hill, J., in the case of *Foong Kooi v. Wong Ching*[5], a decision which apparently Taylor, J., felt himself at liberty to disregard in the case of *Wagner v. Singam*[6], and subsequently section 11 was again amended by section 3 of the Control of Rent Ordinance, 1952, which reads as follows :—

"3. The following section is hereby substituted for section 11 of the principal Ordinance:

"11. An appeal shall lie on a point of law from any decision of the Board."

I find these successive amendments of section 11 strange and difficult to understand. Had sub-section (1) only of the original section 11 been amended and had sub-section (2) remained the position would have been tolerably clear and it would have been possible without unduly straining the accepted canons of construction to hold that the section gave a right of appeal on a point of law from any decision of the Board, that such appeal was to the High Court, and that the High Court had jurisdiction to entertain it. Now, however, that the Legislature has seen fit to obliterate sub-section (2) from the statute book, I am unable to find any provision giving this Court jurisdiction to entertain appeals from the Board and I am not prepared to say that all that remains of section 11 can possibly be construed to give such jurisdiction by implication. Clearly, of course, the section as it now stands gives some sort of appeal, but where does that appeal lie? Does it lie to some executive authority such as the High Commissioner or the Mentri Besar of the State? or does it lie to one of the established Courts of the country? It may be said that because the appeal is on a point of law it is probably to a Court but, even if that be accepted, to what Court? to the Court of Appeal, to the High Court, to the Sessions Court? On all these points the Ordinance is silent. Some inference may be capable of being drawn by analogy with section 10 which provides for a special case stated by the Board to be determined by the High Court, but it seems to me that a mere analogy is not sufficient to provide a foundation for jurisdiction.

If the appeal were intended to be to the High Court I should have expected the Ordinance to have said so and to have gone on not only to give the Court jurisdiction to entertain it but to set out its powers of dealing with it. It is unnecessary to recite at length all the instances in which a right of appeal from statutory tribunals has thus been given and dealt with by the local Legislature. I would only refer to section 237 of the Land Code dealing with appeals from Collectors of Land Revenue, to section 31 of the Workmen's Compensation Enactment dealing with appeals from Commissioners for Workmen's Compensation, and section 77 of the Income Tax Ordinance dealing with appeals from the Board of Revenue in Income Tax. In this connection, too, it may not be inappropriate to refer to section 13 of the Singapore Control of Rent Ordinance, 1947, as being very much in point.

And not only am I unable to achieve any certainty as to the intention of the Legislature in the present connection but it seems to me that even if I were able to arrive at any opinion on the point, I would be flying in the face of authority were I to read such opinion into the wording of the Ordinance. In that connection, I would quote certain observations of the present Lord Chancellor in the recent case of *Magor & St. Mellons Rural District Council v. Newport Corporation*[7], and I make no apology for quoting them at some length. His Lordship quoted the following passage from the judgment of Denning, L.J., in the Court of Appeal :—

" 'We sit here,' he says, 'to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.' "

He then went on to observe :—

"The first part of this passage appears to be an echo of what was said in Heydon's Case 300 years ago, and, so regarded, is not objectionable. But the way in which the learned Lord Justice summarizes the board rules laid down by Sir Edward Coke in that case may well induce grave misconception of the function of the court. The part which is played in the judicial interpretation of a statute by reference to the circumstances

of its passing is too well known to need restatement; it is sufficient to say that the general proposition that it is the duty of the court to find out the intention of Parliament — and not only of Parliament but of Ministers also — cannot by any means be supported. The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited:.....

"The second part of the passage that I have cited from the judgment of the learned Lord Justice is no doubt the logical sequel of the first. The court, having discovered the intention of Parliament and of Ministers too, must proceed to fill in the gaps. What the legislature has not written, the court must write. This proposition .....cannot be supported. It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation. And it is less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act."

I am thus driven to the conclusion that irrespective of whether section 11 gives a party any right of appeal against a decision of the Rent Board it certainly fails to give this Court any jurisdiction to entertain such an appeal, and I must therefore refuse to exercise such a jurisdiction.

I would add that I have considered the question of whether in view of the fact that the point of want of jurisdiction was not taken by either of the parties I should not hold that it has been waived. On such a point, however, it seems to be that where there is a complete lack of jurisdiction there can be no question of waiver and that it is the duty of the Court to take and deal with the point if it is not raised by the parties. As was said by Viscount Simon, L.C., in the case of *Westminster Bank Ltd. v. Edwards*[8] :—

"A court not only may, but should take objection where the absence of jurisdiction is apparent on the face of the proceedings. Thus, an appellate court not only may, but must, take the objection that it has no jurisdiction to hear an appeal if it is apparent that no right of appeal exists. Vaughan Williams, L.J. in **Norwich Corporation v. Norwich Electric Tramways Co., Ltd.**, formulated the proposition thus: 'If the court in any case is itself satisfied that it has no jurisdiction to entertain the application made, it is its duty, in my opinion, to give effect to that view, taking, if necessary, the initiative upon itself.' "

There will accordingly be no order in the present proceedings and the appellant as the party who initiated them will pay the taxed costs.

No order.

NYALCHAND MOTICHAND & CO. v. A. S. MOHAMED MYDIN; V. VARUSAY RAWTHER, 3rd party *.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore), and Pretheroe, J.) August 11, 1952]

[Penang — Civil Appeal No. 53 of 1951]

Carriage of Goods by sea — Common law — Carriers — Carriage of goods by lighter owners — Liability of — Common carriers distinguished.

* As we go to press we understand that leave to appeal to the Judicial Committee of the Privy Council has been granted. — *Ed. M.L.J.*

This was an appeal from the decision of Spenser Wilkinson, J. reported in (1951) M.L.J. 197. The question at issue was whether the respondent who was a lighter-owner was liable for damage caused to goods shipped by the appellants where negligence has not been established.

At the trial the appellants based their claim on negligence and on the liability of the respondent as a common carrier. The learned trial Judge found against both these claims and dismissed the suit. The two main grounds of appeal were that the learned trial Judge was wrong in finding that the defendant was not a common carrier, or alternatively he was under the same liability as a common carrier.

Held, (Pretheroe, J. dissenting) that (1) the liability of shipowners as insurers of goods carried by them is a doubtful question; (2) whilst lighter owners are never common carriers they are nevertheless under the same liability as a common carrier in respect of loss of or damage to goods carried by them.

Liver Alkali Co. v. Johnson[1] followed.

Cases referred to :—

(1) *Liver Alkalai Co. v. Johnson* 7 Ex. 267 and 9 Ex. 338.
(2) *Consolidated Tea & Lands Co. v. Oliver's Wharf* (1910) 2 K.B. 395.
(3) *Misa v. Currie* (1876), 1 App. Cas. 599.
(4) *Tamvaco & Co. v. Timothy & Green* (1882) Cab. & El. 1.
(5) *Electric Supply Stores v. Gaywood* 100 L.T. 855, 856.
(6) *Belfast Ropework Co. v. Bushell* (1918) 1 K.B. 201.

COURT OF APPEAL.

N. L. Macassey for the appellants.
F. G. Pooley for the respondent.
C. D. D. Hogan for the 3rd party.

Cur. Adv. Vult.

Mathew, C.J., (F.M.) : — The facts in this case are not in dispute The plaintiffs, who are merchants, employed the defendant, who is a lighterman, to carry 500 bags of betel-nuts from Weld Quay, Penang to the "S.S. Union Power" which was at anchor in the Penang roads. The defendant had no vessel to transport the betel-nuts, and arranged for another lighterman (who was made the third party) to transport the goods on his behalf. Three hundred and forty bags had been loaded into a lighter when work stopped. The lighter was resting on the foreshore and the tide was low. By midnight the lighter was afloat and it was found that there was some water in the bilge which the crew baled. Some hours later the lighter was found to be taking in more water than could be reduced by baling. The goods were transferred to another lighter, but by that time 90 bags had been damaged by sea water. The precise loss which the plaintiffs sustained was not determined by the learned trial judge. On examination, the lighter was found to be freshly holed, and this can only have been caused by the lighter sitting at the time of loading on wreckage concealed in the mud.